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FEDERAL TRADE COMMISSION
Agency Information Collection Activities;
Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for the FTC’s enforcement of the information collection requirements in its Fair Packaging and Labeling Act regulations (“FPLA Rules”). That clearance expires on May 31, 2015.

DATES: Comments must be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “FPLA Rules, PRA Comment, P074200” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/fplaregspra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Megan Gray, Attorney, Division of Enforcement, Bureau of Consumer Protection, (202) 326-3405, 600 Pennsylvania Ave., NW, Room 9541, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The FPLA, 15 U.S.C. 1451-1461, was enacted to eliminate consumer deception concerning product size and package content. Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) a statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of the company responsible for the product. The FPLA regulations, 16 CFR parts 500 - 503, specify how manufacturers, packagers, and distributors of “consumer commodities” must do this.¹

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must get OMB approval for each collection of information they conduct or sponsor. “Collection of information” includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC seeks clearance for the disclosure requirements under the FPLA Rules and the FTC’s associated PRA burden estimates that follow.²

¹ “The term consumer commodity or commodity means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.” 16 CFR 500.2(c). For the precise scope of the term’s coverage see 16 CFR 500.2(c); 503.2; 503.5. See also <http://ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-packaging-labeling-act>.

² To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate “cents off,” “introductory offer,” and/or “economy size” claims, Commission staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

- A. Estimated number of respondents: 801,514³
- B. Burden Hours: 8,015,140 hours, cumulative (yearly recurring burden of 10 hours per respondent to modify and distribute notices x 801,514 respondents)
- C. Labor Costs: \$185,149,734

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use employees to create compliant labels. Of the 10 hours spent by each respondent, Commission staff assumes the hour breakdown will be as follows: 1 hour of managerial and/or professional time per covered entity, at an hourly wage of \$60,⁴ 2 hours of specialized clerical support, at an hourly wage of \$26⁵, 7 hours of clerical time per covered entity, at an hourly wage of \$17,⁶ for a total of \$185,149,734 (\$231 blended labor cost per covered entity x 801,514 entities).

³ Commission staff identified categories of entities under its jurisdiction that supply consumer commodities as defined in the FPLA Rules. Those categories include retailers, wholesalers, and manufacturers. Commission staff estimated the number of retailers (735,038) based on Census data (under NAICS subsectors 445, 452, and 453, respectively, for food and beverage stores, general merchandise stores, and miscellaneous store retailers) compiled by PricewaterhouseCoopers, LLC for the National Retail Federation report, “Retail’s Impact Across America”: <https://nrf.com/advocacy/retails-impact>. Commission staff estimated the number of wholesalers (42,160) and manufacturers (24,316) based on 2007 Census data (comparable 2012 Census data for them have not yet been released). See generally http://www.census.gov/econ/census/data/historical_data.html. Although the stated number of respondents suggests precision, it is an estimate in that it aggregates the number of establishments under industry codes that FTC staff believes reflect entities subject to the FPLA. But, even allowing for industries that may apply, the Census data do not separately break out non-household products from household use. Accordingly, the source information is over-inclusive and thus overstates what is actually subject to the FPLA.

⁴ Based on an average of “General and Operations Managers” (\$55.81) and (\$63.46), resulting in \$59.64, rounded up to \$60, available from “Bureau of Labor Statistics, Economic News Release, April 1, 2014, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013.” <http://www.bls.gov/news.release/ocwage.nr0.htm>.

⁵ “Specialized clerical support” consists of computer support personnel who design the appearance and layout of product packaging, including appropriate display of the disclosures required by the FPLA regulations. The wage estimate is based on mean hourly wages for “Computer support specialist.” See Bureau of Labor Statistics, Economic News Release, April 1, 2014, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013.” <http://www.bls.gov/news.release/ocwage.nr0.htm>.

⁶ See *id.* The clerical wage estimate is a rounded average of mean hourly wages for “computer operators” (\$19.25) and “data entry and information processing workers” (\$15.28).

D. Capital/Non-Labor Costs: \$0

Commission staff believes that the FPLA Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (*e.g.*, offices and computers) for the information collections discussed above.

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS FROM FEDERAL REGISTER DATE OF PUBLICATION]. Write “FPLA Rules, PRA Comment, P074200” on your comment. Your comment – including your name and your state - will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission website.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn’t include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn’t include any

sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to treat your comment as confidential, you must file it in paper form, with a request for confidentiality, and you have to follow the procedure explained in FTC Rule 4.9(c).⁷ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/fplaregspra>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write "FPLA Rules, PRA Comment, P074200" on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite

⁷ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS FROM FEDERAL REGISTER DATE OF PUBLICATION]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,
Principal Deputy General Counsel.

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